

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

ISO New England Inc.

Docket No. ER04-1255-000

ORDER REJECTING REVISIONS TO APPENDIX E OF MARKET RULE 1

(Issued December 21, 2004)

1. On September 29, 2004, as amended September 30, 2004, ISO New England Inc. (ISO-NE) submitted revisions to Appendix E of Market Rule 1 related to the Day-Ahead Load Response Program (DALRP) to comply with the Commission's November 17, 2003 Order.¹ In this order, the Commission rejects the filing, and orders ISO-NE and NEPOOL to make a new compliance filing. This order benefits customers by requiring a comprehensive DALRP that will enhance competition and promote reliability in New England markets.

Background

2. Efforts to create a DALRP in New England began in Spring 2002 when ISO-NE and NEPOOL submitted a filing to initiate Standard Market Design (July 15, 2002 SMD Filing).² In that filing, Appendix E to Market Rule 1 proposed new categories of load response programs to replace all of the then-existing load response programs. In addition to various Real-Time Demand and Price Response Programs, Appendix E included provisions relating to the implementation of a Day-Ahead Demand Response

¹ *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,211 (2003) (November 17, 2003 Order).

² Docket No. ER02-2330-000.

Program. On September 20, 2002, in response to the July 15, 2002 SMD Filing, the Commission issued an order generally accepting the proposed load response programs (September 20, 2002 Order).³

3. The Commission did not require any changes to the proposed DALRP at that time. However, in response to requests for rehearing of the September 20, 2002 Order, the Commission directed several modifications to the DALRP in an order issued on December 20, 2002 (December 20, 2002 Order).⁴ In response to ISO-NE's and NEPOOL's compliance response to the December 20, 2002 Order, the Commission issued an order⁵ identifying a number of recommendations based on a report from the New England Demand Response Initiative (NEDRI),⁶ and directed NEPOOL to implement related changes by the summer of 2004. The NEDRI recommendations identified by the Commission included:

(1) inclusion of more flexible bidding process by removing the requirement that no bid can be smaller than one MW, (2) implementation of an effective, location-based ICAP resource credit, and (3) development of an 'economic, price-driven' day-ahead market demand response program by 2004. Additionally, NEDRI's final report included... (1) allowing fixed bids each month or capability period in the Day-Ahead Demand Response program instead of the daily bidding requirement, and (2) permitting demand resources to enroll in both the Day-Ahead and Real-Time Demand Response Programs.^[7]

³*New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287 (2002).

⁴*New England Power Pool and ISO New England, Inc.*, 101 FERC ¶ 61,344 (2002).

⁵ *New England Power Pool and ISO New England, Inc.*, 103 FERC ¶ 61,304 (2003) (June 6, 2003 Order).

⁶ NEDRI was created to develop a comprehensive, coordinated set of demand response programs for the New England regional power markets. NEDRI's goal was to outline workable market rules, public policies, and regulatory criteria to incorporate customer-based demand response resources into New England's electricity markets and power systems.

⁷ June 6, 2003 Order at P 68.

4. ISO-NE then requested that the Commission eliminate any firm implementation deadlines for the DALRP and permit ISO-NE to work with NEPOOL and its stakeholder process toward implementation of the DALRP within the context of a broader wholesale markets plan. On November 17, 2003, the Commission issued an order granting ISO-NE's request to remove firm deadlines. The Commission directed ISO-NE and NEPOOL to implement the DALRP as soon as it is feasible, but no later than March 31, 2005. The Commission also directed the ISO to make periodic filings regarding the development of the DALRP.

The September 29, 2004 Filing

5. ISO-NE has concluded that the optimal approach to designing a DALRP would be to provide a new Day-Ahead option for each of the existing Real-Time Load Response Programs. ISO-NE states that providing a Day-Ahead option would require little reconfiguration of the existing programs and would optimize coordination between the new DALRP and the existing Real-Time Load Response Programs. Under the proposed DALRP, a demand resource desiring to offer curtailments into the Day-Ahead Energy Market would first register in one of the Real-Time Load Response Programs. Such a resource could then make curtailment offers Day-Ahead if it chose to do so. If a demand resource's offer is not accepted in the DALRP, the resource could still participate in the Real-Time Load Response Program in which it is registered.

6. ISO-NE states that program participants in the DALRP will have the opportunity to submit an offer on behalf of Demand Resources concurrent with the Day-Ahead Energy Market in increments of 100 kW. ISO-NE states that the minimum offer price shall be \$50/MWh and the maximum shall be \$1,000/MWh, with a minimum interruption period between one and four hours. ISO-NE will allow these resources to modify their offers on a daily basis. A single offer can be effective for all program days up to four months into the future.

7. ISO-NE states that DALRP offers that clear the market will be paid the Day-Ahead Locational Marginal Price (LMP) multiplied by the offered interruption amount for all cleared hours. ISO-NE states that Real-Time Load Response deviations, which represent the difference between actual performance in Real-Time and the DALRP cleared interruption amount, are settled at the Real-Time LMP. Any charges or credits associated with such deviations will be allocated to the corresponding program participant. The costs associated with payments made to DALRP resources are to be allocated to Real-Time Network Load, as the Commission has previously directed.

8. ISO-NE proposes a “sequential clearing” methodology that will be used to determine whether to accept a DALRP offer. The process for clearing DALRP offers will occur after an approved solution to the Day-Ahead Energy Market has been determined. DALRP offers will be compared to the Day-Ahead LMP resulting from the approved Day-Ahead Energy Market solution. If the DALRP offer price submitted by a demand resource including any curtailment initiation price is less than Day-Ahead LMP, the DALRP offer will clear. ISO-NE specifies that the cleared DALRP offers will not change the approved Day-Ahead Energy Market solution. ISO-NE believes that since the load to be interrupted will have already been accounted for in the Demand Bids submitted in the Day-Ahead Energy Market, the resulting decline in Demand Bids due to the DALRP will reduce the Day-Ahead LMP. ISO-NE states that when the program is implemented in 2005, it expects that the amount of DALRP offers clearing the market will be very modest.

9. ISO-NE also has committed to NEPOOL that once the DALRP clears more than 50 MW in a single hour, the ISO will work cooperatively with the NEPOOL Markets Committee to redesign the DALRP to further integrate it into the Day-Ahead Energy Market. ISO-NE also states that, “the proposed clearing process is a reasonable and practical accommodation in light of the modest amount of interruption initially expected to clear and the expectation that Day-Ahead Demand Bids will account for DALRP offers.”⁸

10. In the November 17, 2003 Order, the Commission directed the ISO and NEPOOL to implement the DALRP as soon as it is feasible, but no later than March 31, 2005. Here, ISO-NE requests an effective date of October 1, 2005 to coincide with the implementation of the Ancillary Service Markets. ISO-NE states that good cause exists for the extension of the deadline because it is in the process of completing many initiatives that will have a much larger financial impact on the markets than the DALRP is expected to have. ISO-NE also states that implementing the DALRP coincident with the Ancillary Services Markets project will allow for a much more efficient use of resources and budgets.

⁸ Filing at 8.

11. ISO-NE requests that the Commission accept the proposed revisions to Appendix E of Market Rule 1 pursuant to section 206 of the Federal Power Act (FPA).⁹ Although the NEPOOL Markets Committee voted by more than 60 percent in favor of the DALRP proposal, it fell short of the 66.67 percent super-majority required for approval. ISO-NE states that at its request, the DALRP was placed on the August 6 NEPOOL Participants Committee agenda, but that the NEPOOL Participants Committee did not approve the proposed changes.

Notice of Filings, Interventions and Protests

12. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 60849 (2004), with comments, protests, and interventions due on or before October 13, 2004. Northeast Utilities Service Company (NUSCO), on behalf of Northeast Utilities (NU) Operating Companies,¹⁰ Select Energy, Inc., and on its own behalf, filed a motion to intervene. Pinpoint Power, LLC (Pinpoint) and the NEPOOL Industrial Customer Coalition (NICC) filed motions to intervene and comments. The NEPOOL Participants Committee (on behalf of the NEPOOL Participants) and Massachusetts Municipal Wholesale Electric Company (MMWEC) filed motions to intervene and protests. On November 5, 2004, ISO-NE filed an answer to the protests and comments. On November 19, 2004, MMWEC filed an answer to the answer of ISO-NE.

13. Pinpoint and NICC both express concern with ISO-NE's requested effective date of October 1, 2005 (as opposed to the March 31, 2005 Commission-ordered deadline). Pinpoint states that the requested effective date may continue to delay the implementation of the DALRP and unduly delay the implementation of the Ancillary Services Markets program. Pinpoint states that the Commission should at least require the ISO to fully explain why it believes the Ancillary Services Market project and the DALRP cannot become implemented prior to the Summer 2005 peak period, and to provide specific timelines for implementing the programs. NICC states that the October deadline for implementing the Ancillary Services Market is still tentative, and requests that the Commission de-link the DALRP from the Ancillary Services Market timeline.

⁹ See 16 U.S.C. § 824e.

¹⁰ The NU Operating Companies are: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire.

14. The NEPOOL Participants Committee protests the filing and states that ISO-NE is authorized to unilaterally change NEPOOL's filed rate only in exigent circumstances, which do not exist here. The NEPOOL Participants Committee states that the ISO-NE filing seeks to compel changes to NEPOOL's filed rate pursuant to section 206 of the FPA, but that nothing in the ISO's filing challenges the lawfulness of the currently filed DALRP. The NEPOOL Participants Committee states that ISO-NE has not met its burden of proving that the current DALRP is unjust and unreasonable, and that there is no basis in the record to conclude that the currently filed DALRP does not conform to the requirements of the FPA. The NEPOOL Participants Committee further states that the Commission directed ISO-NE and NEPOOL to "consider" (as opposed to "implement") the recommendations of NEDRI. The NEPOOL Participants Committee states that the Commission previously stated that the NEDRI process was not intended to circumvent ISO-NE and NEPOOL stakeholder deliberations.

15. MMWEC requests that the Commission reject the aspect of the proposed DALRP in which the cleared DALRP offers will not change the approved Day-Ahead Energy Market Solution. MMWEC objects to the ISO proposal to adopt a "sequential clearing" methodology in which load response bids that clear the market will be paid for their planned reductions, stating that the market will not be reconstituted without the reduced load to determine the proper market clearing price. MMWEC states that a main reason to implement demand response programs is to allow load reductions to compete on equal footing with generation resources, allowing lower-priced load reductions to displace higher-priced generation, and the ISO's proposal is not properly designed to benefit all market participants. MMWEC states that under the proposal, the market-clearing price and the number and type of generators that are dispatched will be the same whether load participates in the market.

16. MMWEC also states that the ISO has not presented credible information detailing its options and their corresponding costs, and even if full implementation of a properly functioning DALRP is not possible immediately, the ISO should justify why interim measures that ensure that market participants benefit from load reductions cannot be put into place. MMWEC also states that the ISO's plan to revisit its market design when load participation exceeds 50 MW reflects an arbitrary and unreasonable restriction on implementing a proper market design.

17. In response to concerns regarding the requested October 1, 2005 effective date, ISO-NE states that a requirement to implement the DALRP sooner would come at the expense of other important programs currently being developed, some of which will have a larger financial impact on the markets than the DALRP. ISO-NE states that allowing

the DALRP to be implemented coincident with the Ancillary Services Markets Project will allow for the efficient use of resources and budgets by enabling the ISO to synchronize the development, testing, and training for both programs.

18. With regard to the NEPOOL Participants Committee's assertion that ISO-NE has not shown that the current DALRP is unjust and unreasonable, ISO-NE states that the current DALRP in Appendix E of Market Rule 1 does not constitute a fully functional program that can be implemented, and the September 29 Filing added the market rule provisions necessary to implement a fully developed and functional DALRP. ISO-NE states that in order to comply with the Commission's November 17, 2003 directive regarding implementation of the DALRP, it filed the program that had been vetted and supported by a majority (but not the super-majority required for approval) of the NEPOOL Markets Committee. ISO-NE states that it believes that the filing was the appropriate action in attempting to comply with the Commission's November 17, 2003 Order.

19. In response to MMWEC's concerns, ISO-NE states that the proposal is a reasonable and measured approach given the level of expected participation in the program, and that MMWEC's desired alternative would cost an estimated \$4 - \$7 million to implement. ISO-NE also states that MMWEC's objections to the DALRP clearing methodology proposed appears to rest on a misunderstanding. ISO-NE states that prices will be affected by the lower amount of demand bids submitted in the Day-Ahead Energy Market due to interruptible load, which will lead to lower market clearing prices. The ISO states that this prevents the need to change the approved Day-ahead Energy Market solution based on cleared DALRP offers, and MMWEC will not be deprived of the benefits of the DALRP.

Discussion

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene and notice of intervention, serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answers of ISO-NE and MMWEC because they have provided information that assisted us in our decision-making process.

21. The Commission agrees with MMWEC's contention that the day-ahead market dispatch and clearing prices should reflect economic DALRP bids and that "the core of a properly designed day ahead demand response program is that demand resources be able to compete with supply resources."¹¹

22. The Commission finds that ISO-NE's response that market clearing prices may decrease as a result of the decrease in the number of demand bids is insufficient. There must be a direct mechanism in place within the structure of the program that ensures market clearing prices are impacted by demand reductions, instead of simply allowing for the possibility that this will occur through the demand forecasting of market participants as currently proposed. The sequential clearing methodology as described in the DALRP fails to accomplish this, and fails to comply with Commission directives in the June 6, 2003 order. Commission policy and previous direction to NEPOOL and ISO-NE has been to ensure that demand response resources are treated on an equal basis with supply resources.¹²

23. ISO-NE's argument for not fully integrating DALRP offers into the Day-Ahead Energy Market clearing mechanism is that the costs of the project are an estimated \$4 - \$7 million, and that there will be limited participation. However, ISO-NE has not presented a cost-benefit analysis, or any other basis for the \$4 - \$7 million cost estimate or its claim of limited participation to substantiate these claims and cost levels.

24. Therefore the Commission rejects the proposed tariff revisions. However, the Commission directs ISO-NE and NEPOOL to file revisions, within 45 days of the date of this order, to the current Day-Ahead Demand Response Program to incorporate integrated market clearing of demand resources in the day-ahead market, or to file detailed support for the claim that the costs outweigh the benefits including an assessment of appropriate business processes and sequencing of software enhancements. This detailed support must provide sufficient documentation of (a) the stated \$4 to \$7 million implementation cost, (b) forecasts of load participation and market clearing price reductions, and (c) a detailed cost-benefit assessment.

¹¹ MMWEC Answer at 4.

¹² The Commission has previously approved the NYISO Day-Ahead Demand Response Program. Itsutilizes integrated market clearing. *See New York Independent System Operator, Inc.*, 102 FERC ¶ 61,313 (2003).

The Commission orders:

(A) ISO-NE's filing is hereby rejected, as discussed in the body of this order.

(B) ISO-NE and NEPOOL are directed to make a joint filing of a revised DALRP, within 45 days, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.